

DELTA PROTECTION COMMISSION

14215 RIVER ROAD

P.O. BOX 530

WALNUT GROVE, CA 95690

Phone (916) 776-2290

FAX (916) 776-2293

E-Mail: dpc@citilink.net Home Page: www.delta.ca.gov

**AGENDA ITEM #9**

May 12, 2000

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Process and Actions Required to Adopt Policies in "Land Use and Resource Management Plan for the Primary Zone of the Delta" as Regulations through the Administrative Rulemaking Act
(For Commission Action)

BACKGROUND:

The Commission staff is concerned that an argument may be presented that at least some policies in the Commission's Plan might be deemed regulations under California's Administrative Procedures Act. To avoid any ambiguity, staff initially sought a legislative exemption from the Act's requirements. As reported at the March 2000 meeting, however, that effort has not been successful. Various Commissioners therefor requested that staff move forward in processing Plan policies as regulations.

PROCESS FOR ADOPTION:

After consultation with OAL staff, staff of other agencies that have similar requirements, and several attorneys in the Attorney General's office, the following steps/actions will be taken:

- The Commission will formally approve the proposed process and direct the Executive Director to prepare and submit to OAL for dissemination a Notice of Proposed Adoption of Regulations and related documents.
- Staff will set dates for a comment period for submittal of written comments and publish and distribute the Notice as required by the Administrative Procedures Act.
- Staff will set dates and locations for three public hearings in different parts of the Delta. The Commission should direct that a subcommittee, or subcommittees, will preside at the three public hearings.

- Staff will prepare all required analysis of the proposed regulations and will document and respond to all written and oral comments submitted to the Commission.
- Staff will prepare all required documentation and legal analysis describing the Commission's authority to adopt each proposed regulation and a legal reference for each proposed regulation.
- At the end of the comment period and after the three public hearings are held, staff will bring to the Commission proposed regulations for formal adoption. The Commission will at this time decide whether to reaffirm or to amend the policies in the Plan. Staff will recommend that, in order to facilitate having identical language in the Plan and in the regulations ultimately approved by OAL, that the Commission delegate to the Executive Director the authority to make any non-substantive changes in policies required by OAL.
- After adoption, staff will prepare and submit to OAL a complete "rulemaking record" which will include the notices, minutes of public hearings, responses to comments, and other required materials.

Since Plan policies have already been analyzed under the California Environmental Quality Act, no further analysis under that Act is anticipated unless the Commission proposes substantive change to the Plan policies.

ASSISTANCE IN PREPARATION OF RULEMAKING MATERIALS:

To assist in preparation of the required materials, staff asked the Attorney General's Office if assistance could be provided. The Attorney General's office has agreed to enter into a contract with the Commission for a legal assistant on an hourly basis. The cost for a legal assistant is \$53 per hour. With the approval of the Commission, staff would proceed with such an arrangement as quickly as possible. This arrangement is also discussed in the proposed budget for FY 00-01.

STAFF RECOMMENDATION:

The Commission should discuss the proposed process for adopting regulations and formally act to direct the Executive Director to proceed as described above.